

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to discounted tobacco products

The Revenue Department hereby amends Chapter 83, “Tobacco Tax,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 453A.49.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 453A.42.

Purpose and Summary

The Department regularly audits or examines returns filed and tax remitted for the tax imposed on tobacco products under Iowa Code chapter 453A, subchapter II. The Department recently noticed an inconsistency in the application of the price on which tax due should be calculated. To provide clarity going forward, the Department adopted new subrule 83.3(3) so all taxpayers know how the Department will calculate tax due for sales of tobacco products.

Iowa Code section 453A.42(18) defines “wholesale sales price” as “the established price for which a manufacturer sells a tobacco product to a distributor, *exclusive of any discount or other reduction*” (emphasis added). Thus, for a product sold by a manufacturer to a distributor at both a wholesale sales price and a lower price, often described as a “prepriced price” or “discounted price,” the tax should be calculated based on the wholesale sales price. This rule making establishes how the Department will determine whether products are identical and priced at a discount and provides several examples to help taxpayers understand how the subrule will be applied.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 28, 2021, as **ARC 5788C**. A public hearing was held virtually on August 17, 2021, at 2 p.m. Comments were received from five representatives of Core-Mark. The commenters indicated this rule making will create a variety of challenges for their operation.

Because this rule making will resolve inconsistencies in how these products are taxed, the Department is unable to make changes that will continue current practice for Core-Mark and other similarly situated taxpayers. However, the Department has delayed the effective date of this change to January 1, 2022, to give such taxpayers more time to adjust to the rule. No written comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 1, 2021.

Fiscal Impact

This rule making will result in an increase in tobacco tax revenue of approximately \$325,000 in FY 2022 and about that much going forward. These revenues will be deposited in the Health Care Trust Fund.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 83.3(3):

83.3(3) Discounted tobacco products.

a. A tobacco product sold by manufacturers to distributors that is discounted shall be taxed at the highest wholesale sales price for that product. A tobacco product is discounted when, compared to an identical product on the price list, it has a lower wholesale sales price. For purposes of this rule, tobacco products are identical if they consist of the same ingredients and are sold as the same package size on the price list, irrespective of the price printed on the box, the manufacturer's suggested retail price provided to the retailer, the stock keeping unit or universal product code or similar codes used by the manufacturer, the type of packaging used, the name of the product as marketed, the geographic distribution, the target customer, or the length of the time of the promotion.

b. When analyzing whether a tobacco product is discounted for purposes of this rule, the department will consider the manufacturer's characterization of the tobacco product on the price list, but the manufacturer's characterization of the tobacco product will not be controlling in the department's determination. Examples of discounted tobacco products include, but are not limited to, prepriced cigars and reduced-price multipacks of tobacco products where the manufacturer sells an identical product on the price list at a higher wholesale sales price.

EXAMPLE 1: Manufacturer, Inc. sells XYZ Product cigars in 25-count packages as both a prepriced product and a regular-priced product. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for the prepriced product is listed as \$480 and the wholesale sales price for the regular-priced product is listed as \$605. The prepriced XYZ Product is a discounted cigar product and shall be taxed at the higher wholesale sales price of \$605.

EXAMPLE 2: Manufacturer, Inc. sells ABC Product cigars in 25-count packages. ABC Product is prepriced at \$.99 and \$1.19. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for ABC Product at \$.99 is listed as \$346 and the wholesale sales price for ABC Product at \$1.19 is listed as \$360. ABC Product cigars, at both prepriced price points, shall be taxed at the higher wholesale sales price of \$360.

EXAMPLE 3: Manufacturer, Inc. sells H Product cigarillos in two 30-count packages as prepriced products and as "save on two" products. Prepriced H Product includes 2/\$.99 and 2/\$1.49. Manufacturer, Inc. provides a price list to Distributor, Inc. where the wholesale sales price for H Product at 2/\$.99 is listed as \$190, the wholesale sales price for H Product at 2/\$1.49 is listed as \$207, and the wholesale sales price for H Product as "save on two" is listed as \$350. H Product cigarillos shall be taxed at the highest wholesale sales price of \$350.

EXAMPLE 4: Manufacturer, Inc. sells multipacks of J Product cigarillos. The J Product multipacks are sold as five-packs, and some of the five-packs are labeled as "five for the price of three." The wholesale

sales price of the five-packs of J Product that are not labeled as discounted have a higher wholesale sales price than the five-packs of J Product that are labeled as “five for the price of three.” The five-packs labeled as “five for the price of three” shall be taxed at the higher wholesale sales price of J Product five-packs that are not labeled as discounted.

ITEM 2. Amend rule **701—83.3(453A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 453A.42(18) and 453A.43.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/22/21.